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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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9 MICHAEL JAY McCOLLUM,

Case No. 3:11-cv-00494-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 STATE OF NEVADA, et al.,

13 Respondents.

14 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28
15 U.S.C. § 2254, by a Nevada state prisoner. By order filed September 6, 2012, this
16 Court reviewed the petition and found it to be incomprehensible, therefore, petitioner
17 was ordered to file an amended petition on the Court's preapproved form for filing a
18 habeas petition pursuant to 28 U.S.C. § 2254. (Dkt. no. 17.) The Court sent petitioner
19 the proper form and instructions, and ordered petitioner to file an amended petition on
20 the form provided within forty-five (45) days. (*Id.*). The order warned petitioner that
21 failure to obey the Court's order would result in dismissal. (*Id.*, at p. 3). Petitioner has
22 not filed an amended petition.

23 District courts have the inherent power to control their dockets and "in the
24 exercise of that power, they may impose sanctions including, where appropriate . . .
25 dismissal of a case." *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
26 court may dismiss an action, with prejudice, based on a party's failure to prosecute an
27 action, failure to obey a court order, or failure to comply with local rules. See, e.g.
28 *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with

1 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for
2 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
3 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule
4 requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*
5 *Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
6 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of
7 prosecution and failure to comply with local rules).

8 In determining whether to dismiss an action for lack of prosecution, failure to
9 obey a court order, or failure to comply with local rules, the court must consider several
10 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
11 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
12 favoring disposition of cases on their merits; and (5) the availability of less drastic
13 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*,
14 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

15 In the instant case, the Court finds that the public's interest in expeditiously
16 resolving this litigation and the Court's interest in managing the docket weigh in favor of
17 dismissal, as this case has been pending on the court's docket for several months with
18 no action from petitioner. The third factor, risk of prejudice to respondents, also weighs
19 in favor of dismissal, since a presumption of injury arises from the occurrence of
20 unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524
21 (9th Cir. 1976). The fourth factor — public policy favoring disposition of cases on their
22 merits — is greatly outweighed by the factors in favor of dismissal discussed herein.
23 Accordingly, this action is dismissed based on petitioner's failure to obey this Court's
24 order and his failure to prosecute this action.

25 Additionally, petitioner filed a motion to receive overpay of filing fees. (Dkt. no.
26 18.) Court records indicate that on November 29, 2012, the Clerk of Court refunded
27 petitioner \$455.00. (Dkt. no. 19.) Accordingly, petitioner's motion to receive
28 overpayment of fees is denied as moot.

1 IT IS THEREFORE ORDERED that petitioner's motion to receive overpay of
2 filing fees (dkt. no. 18) is DENIED AS MOOT.

3 IT IS FURTHER ORDERED that this action is DISMISSED with prejudice for
4 failure to prosecute and failure to obey this Court's order.

5 IT IS FURTHER ORDERED that the Clerk shall enter judgment accordingly.

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7 DATED THIS 14th day of May 2013.

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10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE
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